IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2989 of 2007

M/s. Scotts Wines Ltd. Applicant
Vs.
State of Maharashtra & anr. Respondents

Mr.L.P.Kanal for applicant.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 20, 2007.

P.C.

. Heard Mr.Kanal, the learned counsel for the applicant - company which is seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the lower Appellate Court in favour of the original accused no.3.

. The applicant-Company had filed C.C. No.253/S/2002 under Section 138 of the Negotiable Instruments Act, 1881 on account of dishonour of cheque for the sum of Rs.11,96,043/-. The said complaint came to be allowed against accused nos.2 and 3 and accused no.4 was absconding. Accused no.3, therefore, filed Criminal Appeal No.145 of 2006 and the same has been allowed by the learned 7th Ad-hoc Addl. Sessions Judge at Sewri vide his judgment and

order dated 3/7/2007. It was the case of the complainant that accused no.1 Mrs.Sarla Datar was holding licence in the name of her firm Cheers Wines as the sole proprietress and she had appointed M/s.U.M.A. Enterprises as her agent to run the business of M/s. Cheers Wines. Accused nos.2 to 4, as per the complainant, were the partners of M/s. U.M.A. Enterprises and the dishonoured cheques were drawn on the account of M/s. U.M.A. Enterprises and signed by accused no.2. However, as per the complainant accused nos.2 to 4 being the partners of M/s. U.M.A. Enterprises and had taken supplies from the complainant as the agents of M/s. Cheers Wines and in discharge of the pending bills of Rs.11,96,043, they had issued the subject cheques.

. The lower Appellate Court allowed the appeal filed by the accused no.3 on more than one grounds. At the first instance the lower Appellate Court noted that the statutory notice under Section 138 of the N.I. Act was issued by the complainant only to accused no.1 as was clear in the depositions of PW 1 Sanjay who stepped in the witness box on behalf of the complainant. Secondly there was no documentary evidence to show that accused no.3 was the partner of

M/s. U.M.A. Enterprises along with accused nos.2 and 4 at the relevant time. The lower Appellate Court held that the finding of the trial Court that accused no.3 was partner of M/s. U.M.A. Enterprises was based on totally erroneous reading of the documents at Exhibit P-6 and Exhibit P-12. First of all Exhibit P-6 was a document which was not proved in asmuchas its original copy was never placed on record through the evidence of PW 3 - Advocate Kukreja. The trial Court had recorded the objection of the learned Advocate of the accused no.3 on this count and noted that the objection would be considered at the final hearing but the trial Court did not record any findings on this issue. Even if a xerox copy of the said document at Exhibit P-6 was placed on record, it was an agreement dated 9/4/1990 and the agreement period had commenced on 10th October 1989 and ended on 10th October 1990. The subject cheques were issued in the year 1992 and at that time agreement at Exhibit P-12 was in force. In the said agreement at Exhibit P-12, it was accused no.2 along with accused no.4 who were the only two partners and accused no.3 was not shown as the third partner. Thus the finding recorded by the trial Court that accused no.3 was a partner was rightly set

aside by the lower Appellate Court. It is also an admitted position that the cheques were signed by accused no.2 and he did not challenge the order of conviction and sentence passed by the trial Court against him in C.C. No.253/S/2002. Under these circumstances, the reasoning set out by the lower Appellate Court in support of the finding of the acquittal of accused no.3 does not call for any reconsideration at the hands of this Court.

. Hence leave to appeal is refused and the application is rejected.

(B.H.MARL